



January 24, 2023

SUBMITTED VIA FOIAONLINE.GOV

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Regional Freedom of Information Officer
U.S. EPA, Region 9
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105
(415) 947-4251

Re: Freedom of Information Act Request Regarding Oakland Harbor Turning Basins

Dear FOIA Officers:

Earthjustice and West Oakland Environmental Indicators Project (“WOEIP”) (jointly, “Requesters”) submit this request for records to EPA pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. We also are submitting a request for a fee waiver as described below. Our request pertains to the proposal issued by the U.S. Army Corps of Engineers (“Army Corps”) to widen the Oakland Harbor Turning Basins (the “Project”). In December 2021, the Army Corps issued a Draft Integrated Feasibility Report and National Environmental Policy Act Environmental Assessment as well as a draft Finding of No Significant Impact for the Oakland Harbor Turning Basins Widening Navigation Study in Oakland, California.¹

REQUESTED DOCUMENTS

We request to see all documents² exchanged between EPA and the Army Corps regarding the Oakland Harbor Turning Basins and the Project from July 1, 2020 through the date of this request.

¹ See generally <https://www.spn.usace.army.mil/Missions/Projects-and-Programs/Current-Projects/Oakland-Harbor-Turning-Basins-Widening/>.

² Our request for “documents” includes any and all (whether in proposed, draft, or final form) correspondence, memoranda, letters, emails, contracts, agreements, reports, notes, meeting minutes, calendars, telephone logs, text messages, instant messages, photographs, maps, diagrams, scientific or technical data, analyses, studies, and other records, whether paper or electronic.

We would appreciate a “rolling release” of responsive documents as they become available, and additionally request that the most recent documents be produced first, should EPA determine that it is necessary to release responsive documents in stages.

We ask that all responsive documents be provided in Native File Format with metadata. *See* 5 U.S.C. § 552(a)(3)(B) (instructing that agency shall provide records in any form or format if the record is readily reproducible in that form or format). Responsive files may be uploaded to a secure FTP server we can make available to you, or you may contact me at mlogan@earthjustice.org to discuss an alternative means of electronic delivery.

FEE WAIVER REQUEST

We request a waiver of all search and copying fees associated with this request. FOIA mandates that agencies waive search and copying fees where disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *accord* 40 C.F.R. §§ 2.107(l)(1).

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” *U.S. Dep’t of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). To provide public access to this information, FOIA’s fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups”).

As explained below, this request satisfies the requirements for fee waiver listed in the FOIA statute—that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,” and EPA’s governing regulations for waiver or reduction of fees. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. §§ 2.107(l).

A. The Documents Relate to Governmental Activities and Operations.

The requested documents pertain to the Army Corps’ 2021 study of the widening of the Oakland Harbor Turning Basins; requesters seek to review all exchanges that EPA staff had

with the Army Corps about the Project. Thus, the requested documents directly relate to the operations and activities of the federal government.

B. Disclosure Will Contribute Significantly to the Public Understanding of the Operations or Activities of the Government.

The release of the requested documents in response to this FOIA request will provide significant new information enhancing public understanding of the impacts of the Project, and thus, the ability of the Army Corps to move forward with the Project. There is significant public interest regarding persistently poor air quality in West Oakland and whether the local community will be impacted by any project that would widen the Turning Basins. Currently, there is limited public information available as to the safety of the Project or the environmental safeguards that will be put into place.

Requesters are non-profit organizations that advocate for environmental justice and work to create and maintain healthy communities in California. Requesters are well-established organizations, collectively with thousands of supporters in California and nationwide. Requesters engage in public education and advocacy efforts on behalf of their supporters.

Requesters will analyze, synthesize, and disseminate the requested information to their supporters and the broader public via their meetings, websites, newsletters, and action alerts. Requesters will utilize the requested information to inform their comments to state and federal decision makers and other advocacy efforts surrounding the Project on behalf of their supporters.

Requesters have substantial ability to disseminate information to the public through their written publications as well as websites, blogs, social media postings, and other internet resources.

The Requesters Will Not Benefit Financially From the Requested Information.

Requesters have no commercial interest in, and will not financially benefit from, the requested documents. Each requester is a non-profit, public interest organization. As described, the Requesters will use the requested documents to inform the public about federal agency decision-making concerning the Army Corps' plans to widen the Oakland Harbor Turning Basins. Requesters do not resell information obtained through FOIA.

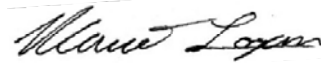
Based on the foregoing, we respectfully request a full fee waiver for production of the requested records.

In the event that any of the requested documents or portions thereof are exempt from disclosure under 5 U.S.C. § 552(b)(1)-(9), we expect to receive all reasonably segregable portions of such records that are not themselves exempt, pursuant to 5 U.S.C. § 552(b).

Please contact me with any questions regarding this request. As provided by FOIA, 5 U.S.C. § 552(a)(6)(A)(i), I look forward to receiving a reply within twenty (20) working days.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Marie Logan".

Marie Logan
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San Francisco, CA 94111
(415) 217-2000
mlogan@earthjustice.org